

4 Jan 31, 2020  
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SEAN F. McAVOY, CLERK

6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON  
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10 DALLAS JOHN PAUL LANGE,

1:19-cv-03268-SAB

11 Petitioner,

12 v.

13  
**ORDER SUMMARILY**  
**DISMISSING HABEAS**  
**PETITION**

14 STATE OF WASHINGTON,

15 Respondent.

17 Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro*  
18 *se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28  
19 U.S.C. § 2254. The \$5.00 filing fee has been paid.

20  
**PROPER RESPONDENT**

21 An initial defect with the Petition is that it fails to name a proper party as a  
22 respondent. The proper respondent in a federal petition seeking habeas corpus  
23 relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S.  
24 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the  
25 petitioner is incarcerated, the proper respondent is generally the warden of the  
26 institution where the petitioner is incarcerated. See *Ortiz-Sandoval v. Gomez*, 81  
27 F.3d 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal  
28 courts of personal jurisdiction. See *Stanley*, 21 F.3d at 360.

# EXHAUSTION REQUIREMENT

Petitioner challenges his 2018 Klickitat County conviction for First Degree Assault. He was sentenced to 147 months' incarceration. Petitioner indicates that he did not appeal his conviction and sentence. ECF No. 1 at 37.

In his grounds for relief, Petitioner argues that the State of Washington has no jurisdiction to decide federal constitutional matters. ECF No. 1 at 40-47. It has long been settled that state courts are competent to decide questions arising under the U.S. Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the state court, as much as it is that of the federal courts, when the question of the validity of a state statute is necessarily involved, as being in alleged violation of any provision of the federal constitution, to decide that question, and to hold the law void if it violate that instrument.”); *see also Worldwide Church of God v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal courts to decide federal constitutional matters). Therefore, Petitioner’s arguments to the contrary lack merit.

16 Additionally, before a federal court may grant habeas relief to a state  
17 prisoner, the prisoner must exhaust the state court remedies available to him. 28  
18 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally  
19 requires that a prisoner give the state courts an opportunity to act on his claims  
20 before he presents those claims to a federal court. *O'Sullivan v. Boerckel*, 526 U.S.  
21 838 (1999). A petitioner has not exhausted a claim for relief so long as the  
22 petitioner has a right under state law to raise the claim by available procedure. See  
23 *Id.*; 28 U.S.C. § 2254(c).

To meet the exhaustion requirement, the petitioner must have “fairly present[ed] his claim in each appropriate state court (including a state supreme court with powers of discretionary review), thereby alerting that court to the federal nature of the claim.” *Baldwin*, 541 U.S. at 29; see also *Duncan v. Henry*, 513 U.S. 364, 365–66 (1995). A petitioner fairly presents a claim to the state court

1 by describing the factual or legal bases for that claim and by alerting the state court  
2 “to the fact that the ... [petitioner is] asserting claims under the United States  
3 Constitution.” *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249  
4 F.3d 895, 898 (9th Cir. 2001) (same). Mere similarity between a claim raised in  
5 state court and a claim in a federal habeas petition is insufficient. *Duncan*, 513  
6 U.S. at 365–366.

7 Furthermore, to fairly present a claim, the petitioner “must give the state  
8 courts one full opportunity to resolve any constitutional issues by invoking one  
9 complete round of the State’s established appellate review process.” *O’Sullivan*,  
10 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,  
11 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275  
12 (1971). It appears from the face of the Petition and the attached documents that  
13 Petitioner has not exhausted his state court remedies as to each of his grounds for  
14 relief. Indeed, Petitioner affirmatively represents that he did not exhaust his state  
15 court remedies.

## 16                   **GROUND FOR FEDERAL HABEAS RELIEF**

17 Petitioner asserts that the Washington state constitution contradicts the  
18 federal constitution regarding the Fifth Amendment right to “presentment or  
19 indictment of a Grand Jury.” He claims “no bill of indictment” was brought against  
20 him rendering his arrest, conviction and imprisonment illegal.

21 Petitioner seems to argue that because the state courts have defied “federally  
22 established procedures and processes for the adjudication of crimes” only “a court  
23 of federal jurisdiction” has jurisdictional authority over his claims. His bald  
24 assertion that “due process of the law was ignored” is unsupported by his factual  
25 allegations.

26 The United States Supreme Court stated long ago: “Prosecution by  
27 information instead of by indictment is provided for by the laws of Washington.  
28 This is not a violation of the Federal Constitution.” *See Gaines v. Washington*, 277

1 U.S. 81, 86 (1928). Consequently, Petitioner's assertions to the contrary presented  
2 in his four grounds for federal habeas relief are legally frivolous.

3 Because it plainly appears from the petition and accompanying documents  
4 that Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition,  
5 ECF No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254  
6 Cases in the United States District Courts. **IT IS FURTHER ORDERED** that all  
7 pending Motions are **DENIED as moot**.

8 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
9 enter judgment, provide copies to Petitioner, and close the file. The Court certifies  
10 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be  
11 taken in good faith, and there is no basis upon which to issue a certificate of  
12 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of  
13 appealability is therefore **DENIED**.

14 **DATED** this 31st day of January 2020.



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18 Stanley A. Bastian  
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21 Stanley A. Bastian  
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23 United States District Judge  
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